confusion is eliminated, when it is no longer necessary to make a distinction between the public or governmental capacity and the private or corporate capacity of a municipal corporation. The authorities make it necessary, however, in such a case, to distinguish between a private right, recognized by the common law, and the right which a man receives, in common with all the public, and which depends upon the discharge of a purely governmental function, as in *Eastman* v. *Meredith*, 36 N. H. 284. The report of the principal case unfortunately does not give the circumstances of the injury so as to make it apparent whether the court would restrict the liability to acts of positive misfeasance. However, it is probable that no such refinement will be made. The modern tendency undoubtedly is to recognize that the duty to maintain property in a safe condition is in all cases purely a private and local duty, and that it makes no difference whether it is public and governmental property or property owned as a private corporate body. Goodnow on Municipal Home Rule, 176.

INJUNCTIONS AGAINST CRIMINAL PROCEEDINGS. — It was the old idea, founded largely on a *dictum* of Lord Hardwicke's in *Lord Montagu* v. *Dudman*, 2 Ves. Sen. 396, that courts of equity had no jurisdiction to enjoin criminal proceedings of any sort. Although there are many modern decisions to the same effect, such injunctions have been granted in a large number of comparatively recent American cases, in which it appeared that irreparable damage to property would result if the criminal proceedings were allowed to go on. *Central Trust Co.* v. *Citizens' St. R. R. Co.*, 80 Fed. Rep. 218. In a recent Georgia case, though it does not appear that irreparable damage was threatened, the court manifested a disposition to follow the old authorities to their full extent. *City of Bainbridge* v. *Williams*, 36 S. E. Rep. 935. Those who take the opposite view contend that where the element of irreparable damage is present, and the complainant further satisfies the court that the final judgment in the criminal suit, if reached, ought to be in his favor, equity, though having no jurisdiction in criminal matters *as such*, is not ousted of its ordinary jurisdiction, for the protection of property, because it happens that the damage threatened will be inflicted under the forms of criminal proceedings.

It is obviously no answer to this argument that the doctrine is new, for every department of our present equity jurisdiction was once an innovation. The objection, if any, must be a practical one, making the interference of equity clearly undesirable. Viewed in this light, the cases fall into two classes. In the first class the complainant relies on the invalidity of the statute under which proceedings are threatened, and the court of equity is therefore called upon to decide a pure question of law which the common law court must decide in the same form if the criminal proceeding is allowed to go on. There seems to be no practical objection to the settlement of that question by equity at the outset rather than by the court of law after irreparable damage has been done. In the second class of cases, in which the complainant relies simply on his innocence in fact of the offence charged, a new difficulty is presented. In order to grant the injunction in such cases, the court of equity must in effect try the complainant on the criminal charge, and, having found him not guilty, impose their decision upon the defendants, who are usually public officers

charged with the execution of the criminal law. *Davis* v. *A. S. P. C. A.*, 75 N. Y. 362. It may be argued that the machinery provided by the state for the administration of the criminal law, including the discretionary powers and duties of various officers and the forms of procedure and trial, is intended not only to safeguard the rights of the accused, but also to afford the best practicable protection against the injury to society, which is the essence of every crime; and that it is against public policy to allow one accused of an offence undoubtedly criminal to hamper or prevent, by means of a civil suit to which the state cannot be a party, the operation in his case of the machinery presumably best adapted to protect the public interest. This argument disappears if the interest of the state in the prevention of crime is equally well served by the equity trial. That is a question on which opinions may well differ, and on the settlement of which the jurisdiction of equity in this class of cases may properly be made to turn.

The distinction here drawn between two classes of cases, though suggested in a few of the decisions, is nowhere squarely laid down. But it is significant that in both classes of cases the decided weight of the actual decisions in this country supports the classification above suggested, while in England, where the question of the constitutionality of a statute cannot arise, there seems to be no case departing from the old rule. A solution which seems never to have been suggested by the courts, but which would apparently avoid most of the practical difficulties, would consist in allowing the injunction in the second class of cases only under such circumstances or in such form that the criminal action may still go to trial, without irreparable damage to property in the mean time. In all the cases which have yet arisen this might have been accomplished by proper procedure. Thus where the irreparable damage is threatened by repeated arrests on the same charge, the court might enjoin all but one arrest. If then the criminal trial resulted in conviction, it would be appropriate for the equity court to dissolve the injunction.

ACTION BY SERVANT WRONGFULLY DISCHARGED. — A servant who has been wrongfully discharged has two well-recognized remedies against his employer: he may regard the contract of employment as rescinded and sue for such services as he has actually rendered in an action for *quantum meruit*, or he may sue for damages for breach of the contract to employ. A third right, to sue on the special agreement to pay wages at such times as, according to its terms, they were to become due, is recognized in a recent Pennsylvania case, *Allen* v. *Colliery Engineers' Co.*, 46 Atl. Rep. 899. The plaintiff was hired by the defendant company as manager of its business for one year at a certain weekly salary. Later he was wrongfully dismissed. Two weeks after this dismissal, he sued and recovered the wages which should have been due him for the past two weeks. After the termination of the year, he brought the present action for the remainder of the wages promised him. The court held that the former recovery was no bar, as the plaintiff was entitled to treat the contract as still existing, and to sue for wages as they became due, "his readiness to serve being considered as equivalent to actual service." The defendant, however, had only promised to pay for services rendered, and the plaintiff's rendering of them was an implied condition of his right to